IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3102 of 1993

with

SPECIAL CIVIL APPLICATION NO 1345 OF 2001

For Approval and Signature:

HON'BLE MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

1 to 5 NO

JUNAGADH MUNICIPALITY

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3102/93 & 1345/01

MR ND NANAVATY for Petitioner No. 1

MS MANISHA LAVKUMAR AGP for Respondent No. 1

MR JR NANAVATI for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE D.H.WAGHELA

Date of decision: 17/04/2004

C.A.V. JUDGEMENT

1. Both these petitions having raised common issues, they were heard together at the request of the learned counsel and are disposed by this common judgment.

2. In Special Civil Application No.3102 of 1993, the petitioner-Municipality has challenged the validity of the order dated 6.8.1992 whereby, in exercise of the powers under sub-section (1) of Section 99 of the Gujarat Municipalities Act, 1963 (the 'Act'), levy of octroi on seeds brought within the octroi limits by or on behalf of the Gujarat State Seeds Corporation Ltd. was prohibited. And, in Special Civil Application No.1745 of 2001, the same municipality has challenged the validity of notification dated 15.3.2000 whereby, under the same powers, the State Government prohibited levy of octroi by any municipality on certain items, which included items brought within the octroi limits for the purpose of telecommunication network and information technology purposes as also I.T.software and all equipments, materials, cables and accessories, instruments, spare parts etc. used for provision of basic telecom services by a licence-holder of the Department of Telecom, Government of India. That exemption is granted for a total period of five years.

3. It was conceded at the outset by the learned senior counsel Mr.N.D.Nanavati that Junagadh Municipal Corporation had taken the place of the petitioner and, with effect from 15.9.2002, the provisions of the Bombay Provincial Municipal Corporation Act had been applied to the city of Junagadh and that the authority to levy octroi was withdrawn by virtue of the amendment of the provisions of Section 99, which amendment came into effect on 1.5.2001. It was, however, submitted on the legal aspect that the exemption granted to particular item, viz. seeds, brought by a particular party was ex-facie discriminatory, arbitrary and in violation of Article 14 of the Constitution. It was further submitted that the economic strength sought to be ensured by Articles 243-X and 243-ZF ought to be protected in public interest and that no public interest was involved in exempting from levy of octroi the goods imported for telecommunication network. It was also submitted that the procedure prescribed in Section 102 for modification of the Rules made for imposing tax were required to be followed once the preliminary procedure prescribed under Section 101 of the Act was complied with and completed. It was submitted that after the Rules imposing the tax

were sanctioned by the State Government, it had no power to exempt or take out any particular items or parties from the levy of octroi as was done by the impugned orders.

4. In support of the above submissions and in reply to the arguments of the respondents, the petitioner relied upon several judgments. FOOD CORPORATION OF INDIA v. MUNICIPAL COMMITTEE, JALALABAD AND ANOTHER [(1999) 6 SCC 74] was relied upon to submit that even if a Corporation was an agency or instrumentality of the Government, that did not lead to the inference that the Corporation was a Government Department and, having attributes of a company, it cannot be exempt from taxation under Article 285 of the Constitution. NEW DELHI MUNICIPAL COUNCIL v. STATE OF PUNJAB AND OTHERS [(1997) 7 SCC 339] was relied upon to submit that property tax levied by municipalities under the Municipal Act would be valid if levy is on lands/buildings used or occupied for any trade or business carried on by or on behalf of the State Government. BALDEV SINGH v. STATE OF HIMACHAL PRADESH [AIR 1987 SC 1239] was relied upon in support of the submission that where exercise of power results in civil consequences, unless the statute specifically rules out the application of natural justice, the rules of natural justice would apply. Therefore, the petitioner was required to be afforded an opportunity of being heard and the administrative decision by the State Government should have been taken after considering the views of the residents or their representatives. SAURASHTRA IRON FOUNDRY & STEEL WORKS PVT.LTD.& ANOTHER v. BHAVNAGAR NAGARPALIKA & ANOTHER [1970 G.L.R.351] was relied upon to submit that Sections 101, 102 and 103 of the Act provide for obligatory steps which have to be taken for imposing a tax and the same procedure was required to be followed for exempting any item from the tax. Once the sanction was given by the government, the power to grant sanction is exhausted once for all and the government cannot by any subsequent action amend or modify the sanction or the Rules. It is, however, in the same judgment held in paragraph 7 that Section 99 does empower the government to pass general or special orders subject to which a municipality may impose a tax. That is altogether a different and a separate power vested in the government which, on its own, can make the imposition of a tax by the municipality subject to its general or special orders. That power is apart from the machinery provided by Sections 101, 102 and 103 which provide for the obligatory steps which have to be taken from the beginning. DWARKA PRASAD LAXMI NARAIN v. STATE OF UTTAR PRADESH & OTHERS [AIR 1954 SC 224] was

relied upon to submit that legislation which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness and, unless it strikes a proper balance between the freedom guaranteed under Article 19 (1) (g) and the social control permitted by Clause (6) of Article 19, it must be held to be wanting in reasonableness. A law or order which confers arbitrary and uncontrolled power upon the executive in the matter of regulating trade or business in normally available commodities cannot be held to be reasonable.

5. On the other hand, it was submitted on behalf of the respondents that the power to impose tax for the purpose of the Act was, under the express provision of Section 99 of the Act, subject to general or special orders which the State Government may make. That provision itself was not under challenge. That the exemption granted by the impugned orders were not made applicable in case of the petitioner only but they were in respect of particular items and all the municipalities in the State were deprived of the income of octroi in respect of particular items by virtue of the impugned orders. Therefore, the orders were not discriminatory. It was also submitted that the impugned orders were issued in bona fide exercise of plenary powers of the Government along the policy decisions taken by the Government. That the issue raised by the petitioner was concluded by the Constitution Bench of the Supreme Court in MUNICIPALITY OF ANAND v. STATE OF BOMBAY AND ANOTHER [AIR 1962 SC 988] wherein, in paragraph 9, it is held that "impose" means the actual levy of the tax after authority to levy it has been acquired by rules duly made and sanctioned and it is such imposition that is made subject to the general or special orders of the Government. Therefore, the Government can at any time by any such order prohibit the imposition of the tax. It was also submitted that while exercising its powers under the conditional legislation, no question of affording an opportunity of hearing arises. Referring to the Memorandum of Association of Gujarat State Seeds Corporation Ltd. (respondent No.2 in Special Civil Application No.3102 of 1993), it was submitted that it was established by the Government with the avowed objective of promoting and developing seed production activities and to take measures to ensure that seeds are available to the farmers at reasonable rates. It was submitted that seeds supplied by the State Seeds Corporation were in a distinct class and met distinct needs of the society in a predominantly agrarian economy. Similarly, the order exempting several items meant for the purpose of telecommunication network and information

technology had an object to be achieved under the policy of the Government which cannot be called into question. Telecommunication is internationally recognized as public utility of strategic importance as held by the Supreme Court in DELHI SCIENCE FORUM AND OTHERS v. UNION OF INDIA AND ANOTHR [(1996) 2 SCC 405].

It is also held therein that the onus to demonstrate that a decision has been vitiated because of adopting a procedure not sanctioned by law, or because of bad faith or taking into consideration factors which are irrelevant, is on the person who questions the validity thereof. This onus is not discharged only by raising a doubt in the mind of the Court, but by satisfying the Court that the authority or the body which had been vested with the power to take decision has adopted a procedure which does not satisfy the test of Article 14 of the Constitution or which is against the provisions of the statute in question or has acted with oblique motive or has failed in its function to examine each claim on its own merits on relevant considerations.

BALCO EMPLOYEES' UNON v. UNION OF INDIA AND OTHERS [(2002) 2 SCC 333] was relied upon for the proposition that it is neither within the domain of the Courts nor the scope of the judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. And in taking a policy decision in economic matters, the principles of natural justice have no role to play.

An unreported judgment of the Supreme Court in INDIAN DRUGS & PHARM.LTD. v. PUNJAB DRUGS MANUFACTURERS ASSOCIATION in Civil Appeal No.3744 of 1988 was relied upon for the following conclusions drawn therein after digesting several earlier judgments of the Supreme Court. It is held therein that preference shown to co-operative institutions or public sector undertakings being in public interest, will not be construed as arbitrary so as to give rise to a contention of violation of Article 14 of the Constitution.

It was also submitted that Article 243-X read with Article 243-ZF of the Constitution empowered the legislature of a State to authorise by law a municipality to levy taxes and that did not derogate from the provisions of Section 99.

6. It is clear from the above discussion of facts and submissions that the State Government is empowered to exempt certain items from the levy of octroi by general

or special order under the express provision of Section 99 of the Act. The exercise of such powers is not shown to be in any way mala fide, arbitrary or discriminatory. The Wednesbury principle would be attracted where an authority exercising the discretion has taken a decision which is devoid of any plausible justification and where any reasonable person could not have taken such decision. In the facts of the present cases, no such infirmity as would require interference within the permissible purview of judicial review could be pointed out. Thus, in short, neither any illegality could be shown nor was any reason made out to quash the impugned orders. The petitions are, therefore, rejected and Rule in each case is discharged with no order as to costs.

Sd/-

(D.H.Waghela,J.)

(KMG Thilake)